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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/826,820	04/16/2004	Francis J. Maguire JR.	313.006.3	1728

20413 7590 02/08/2005

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EXAMINER

WU, XIAO MIN

ART UNIT

PAPER NUMBER

2674

DATE MAILED: 02/08/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/826,820

Applicant(s)

MAGUIRE, FRANCIS J.

Examiner

XIAO M. WU

Art Unit

2674

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 October 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-27 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-27 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION***Double Patenting***

1. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

2. Claims 1-27 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-8 of U.S. Patent No. 6,359,601 in view of Spero (US Patent No. 5,072,218).

Claim 1 of the instant application is seen to be exemplary or representative of group of claims 1-28. therefore, a detailed comparison between claim 1 of US Patent 6,359,601 and claim 1 of the instant application are given below.

Claim 1 of US 6,359,601	Claim 1 of instant application
Apparatus, comprising:	Apparatus, comprising:
an eye monitor , responsive to an eye direction signal with respect to an associated head coordinate system;	an eye monitor , responsive to a monitor eye in said head for providing a monitored eye signal;
a head translatory position monitor ,	a translatory position monitor ,

responsive to a translatory position associated with a head translating with respect to a reference coordinate system , for providing a head translatory position signal;	responsive to a translatory position of a head, for providing a translatory position signal;
a signal processor , responsive to the eye direction signal and the head translatory position signal, for providing the eye direction signal referenced to the reference coordinate system with respect to both head translatory position and eye direction; and	a signal processor , responsive to the monitored eye signal and the translatory position signal, for providing a processed signal referenced to a vehicle coordinate system ;
a control , responsive to the eye direction signal referenced to the reference coordinate system, for providing a control signal.	a control , responsive to the processed signal referenced to the vehicle coordinate system, for providing a control signal.

From the comparison above, it is noted that claim 1 of the instant application is similar to claim 1 of the US Patent No. 6,359,601 with the exception that the claim 1 of the instant application includes **a vehicle coordinate system** instead of **a reference coordinate system** as recited in the claim 1 of the US Patent No. 6,359,601.

Spero is cited to teach that the attitude (or movement position) of the helmet (or head) is detected with respect to a vehicle coordinate system. In other words, Spero discloses using a vehicle coordinate system as a reference coordinate to detect the user's head movement. In view of the fact the head movement can be detected with respect to a vehicle coordinate system when the user is sitting in a vehicle as taught by Spero, it would have been obvious to one of ordinary skill in the art to have modified claim 1 of the US Patent No. 6,359,601 by using the vehicle coordinate system as a reference coordinate system so that the relative movement of the head with respect to the vehicle can be detected.

Response to Arguments

3. Applicant's arguments filed 10/21/2004 have been fully considered but they are not persuasive. Applicant argues that Spero does not disclose using a vehicle coordinate system as a reference coordinate system to detect use's head movement with respect to translatory position. This argument is not persuasive because the patented claim 1 clearly teaches disclose using a reference coordinate system to detect the user's head movement with respect to translatory position and Spero clearly teaches the attitude of the head can be detected with respect to a vehicle coordinate system. Thus, it would have been obvious to one of ordinary skill in the art to have modified the patented claims to detect the head movement not only attitude but also translatory of the head position with respect to the vehicle coordinate system. Claim 2 of the instant application further recite that the apparatus further comprises a head attitude monitor with respect to the vehicle coordinate system. Thus, claims 1 and 2 of the instant application are obvious from the patented claim 1. Furthermore, applicant seems agrees with the obviousness type double patenting with respect to claim 2. It is noted that claim 2 is depending from claim 1.

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If claim 2 is obvious from the patented claim 1, so does the claim 1 because claim 1 contains less limitation than claim 2.

Conclusion

4. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Xiao Wu whose telephone number is (703) 305-4721.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, **Patrick Edouard**, can be reached on (703) 308-6725.

Any response to this action should be mailed to:

Commissioner of Patents and Trademarks
Washington, D.C. 20231

or faxed to:

(703) 872-9306

Hand-delivered responses should be brought to Crystal Park II, 2121 Crystal Drive, Arlington, VA., Sixth Floor (Receptionist).

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Technology Center 2600 Customer Service Office whose telephone number is (703) 306-0377

xw

February 4, 2005

A handwritten signature in black ink, appearing to read 'Xiao Wu', is positioned above the printed name.

XIAO WU
PRIMARY EXAMINER
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